



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## SECOND SECTION

### CASE OF YEĞER v. TURKEY

*(Application no. 4099/12)*

## JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Conviction *in absentia* after not personally being served with documents concerning criminal proceedings, and inability to obtain fresh determination of merits of case • Failing to inform authorities of address change and going abroad for extended period of time not amounting to unequivocal waiver of right to appear and defend oneself, or evading justice

Art 5 § 1 • Unlawful Detention, stemming from a conviction resulting from proceedings manifestly contrary to provisions or principles of Art 6

STRASBOURG

7 June 2022

**FINAL**

**07/09/2022**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Yeğ r v. Turkey,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Jon Fridrik Kj lbro, *President*,

Carlo Ranzoni,

Branko Lubarda,

Pauliine Koskelo,

Jovan Ilievski,

Gilberto Felici,

Saadet Y ksel, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 4099/12) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr İhya Tamer Yeğ r (“the applicant”), on 8 December 2011;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning Articles 5 and 6 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 17 May 2022,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The application concerns under Article 6 of the Convention (i) the alleged unfairness of criminal proceedings owing to the applicant’s trial and conviction *in absentia*, (ii) the alleged breach of his right of access to a court on account of the domestic courts’ refusal to grant him leave to appeal out of time, and (iii) the alleged unlawfulness under Article 5 of the Convention of his resulting detention.

## THE FACTS

2. The applicant was born in 1958 and lives in Istanbul. He was represented before the Court by Mr M. Erbil, a lawyer practising in Istanbul.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkg l, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Turkey.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 17 November 2009 the Istanbul Criminal Court of First Instance convicted the applicant in his absence of issuing an uncovered cheque under section 16(1) of the Law on the Protection of Payees and the Regulation of

Payments by Cheque (Law no. 3167), as in force at the material time, and sentenced him to a judicial fine in the amount of 80,000 Turkish liras (approximately 36,364 euros at the material time).

6. Throughout the criminal proceedings, the trial court was unable to notify the applicant in person of the proceedings, the hearings or the decisions it had taken. To that end, the trial court took the following steps. Firstly, it attempted to serve the writ of summons at the business address indicated on the document containing the specimen signatures of authorised signatories of the company (*imza sirküleri*) of which the applicant had been the managing director. When the letters were returned with the indication that the applicant had not been found at that address, the trial court ordered the police to carry out address inquiries with a view to ascertaining his whereabouts. Subsequently, the police established the applicant's residential address and thereafter the trial court used that address in its attempts, in vain, to serve the documents relating to the criminal proceedings against him.

7. On 31 July 2008 the writ of summons was served on the district chief (*muhtar*) of the neighbourhood where the applicant's residence was located, after the postmen had observed that the applicant was at work at that time and had informed the applicant's neighbour, F.K., of the situation, in line with the procedure prescribed in section 21 of the Notification Act.

8. On 2 December 2009 the trial court's decision dated 17 November 2009 was served at the applicant's residential address pursuant to section 35 of the Notification Act and a notice of service was posted on the door of the building located at that address. That judgment became final on 10 December 2009 without an appeal having been lodged against it.

9. On 12 April 2010 the Istanbul public prosecutor responsible for the execution of sentences converted the judicial fine imposed on the applicant into a term of imprisonment, noting that it had not been paid within the statutory period.

10. On 12 January 2011 police officers visited the business address in the context of their attempts to locate the applicant following the finalisation of his sentence and collected information from a certain neighbour, who stated that even though he had been residing at that address for over twenty years, he had not heard of the applicant's name. Subsequently, police officers went to the address which – following the inquiry carried out by police officers during the trial (see paragraph 6 above) – had been ascertained as the applicant's place of residence, and interviewed the building manager, N.Ş., who told them that the applicant had resided in the apartment building three years previously but that he had later moved out of it owing to issues relating to his debts.

11. On 30 March 2011 the applicant was arrested and placed in prison to start serving his sentence. In a letter dated 25 April 2011, the applicant asked the trial court to hold a retrial and to hear him in court, arguing that he had

not been served with any document in relation to his trial because he had gone abroad in July 2008 and had returned to Turkey in July 2009.

12. On 3 May 2011 the trial court rejected the applicant's request, holding that even though the writ of summons and its decision dated 17 November 2009 had been served at his residential address pursuant to section 21 of the Notification Act, the applicant had not attended the hearings. On 6 June 2011 the Istanbul Assize Court dismissed an objection by the applicant against that decision with final effect and in a summary fashion which did not contain any case specific assessment. The applicant's lawyer was notified of that decision on 2 August 2011.

13. On 30 May 2011 the applicant's lawyer lodged an application with the trial court to have the conviction declared void, arguing, *inter alia*, that the applicant had not been aware of the criminal proceedings on account of having been abroad for an extended period of time until July 2009.

14. On 6 October 2011 the Istanbul Criminal Court of First Instance dismissed the applicant's application, holding that he had failed to lodge an appeal against his conviction within the statutory seven-day time-limit for appeals as provided for in Article 315 of the former Code of Criminal Procedure. Even though it was amenable to appeal, the applicant did not lodge an appeal against that decision.

15. On 3 February 2012 the applicant was released owing to the introduction of new legislative amendments, pursuant to which issuing an uncovered cheque no longer carried a prison sentence.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

16. The relevant domestic law regarding trials *in absentia* may be found in *M.T.B. v. Turkey* (no. 47081/06, §§ 30-36, 12 June 2018).

17. Section 21 of the Notification Act, as in force at the material time, provided that in the event that the addressee or other persons entitled to accept the service of documents on his or her behalf were not present at the address or declined to accept the service thereof, the documents were to be served on, *inter alios*, the district chief subject to the latter's signature, and a notice indicating the address of the person on whom the service was effected was to be posted on the building located at that address. In addition, an attempt was to be made, in so far as possible, to contact a neighbour in order to have him or her inform the addressee of the situation. In that event, the service was considered to have been performed on the day the notice was posted.

18. The Government provided the Court with two judgments, delivered by the Fourth and Tenth Divisions of the Court of Cassation, in which that court had reversed the first-instance courts' decisions dismissing appeals lodged after the expiry of the time-limit prescribed for that purpose, holding that the notifications made by those courts had been unlawful in that they had been contrary to either the Notification Act or the Regulations for the

implementation of that Act (judgment of the Tenth Criminal Division of the Court of Cassation of 17 November 2008 (2007/6711 E. and 2008/16830 K.) and judgment of its Fourth Criminal Division of 24 December 2015 (2013/30256 E. and 2015/40800 K.)). Furthermore, the Court of Cassation allowed the appeals and quashed the judgments of the lower courts in those two cases after carrying out an examination on the merits.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained that his right to a fair trial as provided in Article 6 of the Convention had been breached, as he had been tried and convicted without having been able to exercise his rights to be present and to defend himself in person. In the same vein, the applicant complained that he had been unable to lodge an appeal against his conviction owing to his trial and conviction *in absentia*. The relevant part of Article 6 reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing by [a] ... tribunal ...”

#### A. Admissibility

##### 1. *The parties' submissions*

###### (a) **The Government**

20. The Government raised two preliminary objections: in the first place, they argued that, had the applicant taken the view that there had been no effective remedy in respect of his complaint he should have lodged his application with the Court no later than six months from the date of his arrest on 30 March 2011, the date on which he had taken cognisance of his conviction. The application should thus be declared inadmissible owing to the applicant's failure to comply with the six-month time-limit, given that he had lodged his application with the Court on 8 December 2011.

21. In the second place, the Government argued that the applicant had failed to exhaust the domestic remedies available to him by failing to lodge an appeal with the Court of Cassation against the trial court's refusal of leave to appeal dated 6 October 2011. In support of that contention, the Government referred to the two judgments of the Court of Cassation wherein that court had examined the first-instance courts' refusals of leave to appeal and had reversed those refusals, finding that the service of the convictions handed down by those courts had not been effected in accordance with the provisions of the Notification Act and the Regulations for the implementation of that Act. In the Government's view, had the applicant lodged an appeal against the trial court's decision rejecting his appeal as having been lodged out of

time, the Court of Cassation could have reviewed the lawfulness of the service of the conviction and could potentially have quashed it. Accordingly, the applicant's failure to have recourse to that remedy meant that he had failed to exhaust the domestic remedies available to him.

**(b) The applicant**

22. The applicant submitted that he could not have lodged an appeal against his conviction *in absentia* within the statutory time-limit, simply because he had had no knowledge of it. However, as soon as he had been arrested, he had seized the first opportunity to inform the trial court of his situation and asked for a retrial, which had been unduly refused. Considering that he had lodged his application with the Court within six months from the date on which that refusal had become final, the applicant submitted that he had complied with the six-month rule.

23. Furthermore, the applicant contended that appealing against the trial court's refusal to grant him leave to appeal out of time had offered no prospect of success and had thus been far from providing him with relief, given that he had been in prison at the material time. In any event, by suggesting that he should have had recourse to a remedy which hinged on the unlawfulness of the service of his conviction, the Government had in effect acknowledged that the domestic courts had acted contrary to the procedure and law in his case.

*2. The Court's assessment*

24. The Court observes that the Government's preliminary objections are inextricably linked to the merits of the applicant's complaint that he was tried and convicted *in absentia* in that the thrust of those objections turns on the examination carried out by the domestic courts. Accordingly, the Court joins the Government's preliminary objections to the merits of the case.

25. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

**B. Merits**

*1. The parties' submissions*

**(a) The applicant**

26. The applicant submitted that he had never been informed, nor had he been aware, of the criminal proceedings against him. He contended that, in fact, he had not received any document relating to those proceedings, including the trial court's judgment convicting him. In his view, the argument that he had failed to notify the court of the change of his address was irrelevant, as he had been unaware of the criminal proceedings, which was

the underlying reason why he could not lodge an appeal against the judgment within the statutory time-limit.

27. The applicant further contested the Government's contention that he had absconded, arguing that he had had no reason not to appear before the domestic courts, as he had not been wanted for any reason during his criminal trial. In fact, it was the domestic authorities which had failed in their duty to show the requisite diligence to locate him and to inform him of the criminal proceedings. The applicant further asserted, without giving any details, that he had not lived at his residential address at the material time: hence, he could not have received any of the documents served at that address. In view of the above, the domestic courts' dismissal of his requests had amounted to a violation of his defence rights and his right of access to a court, as protected under Article 6 of the Convention.

**(b) The Government**

28. The Government submitted that the domestic authorities had taken all the necessary steps in order to discharge their duty to duly notify the applicant of the existence of the criminal proceedings against him. In that connection, the trial court had instructed the police officers to inquire into the applicant's address following the failure of its first attempt to serve the summons at the address indicated on the cheque. Subsequently, the police officers had informed the court of what they had established to be the applicant's address, which had thereafter been used by the court for the service of documents during the trial. In fact, the notification had been duly served at that address in line with the Notification Act. However, the applicant had neither been present at that address, nor had he provided the authorities with his new address.

29. Furthermore, the Government emphasised that the applicant had willingly and knowingly absconded from the proceedings by failing to provide the authorities with his address, by moving out of his residence on account of his debts and by going abroad for an extended period of time. It was also significant that neither his written submissions before the domestic courts nor the application form lodged with the Court had contained any information as regards his address throughout his criminal prosecution. Accordingly, the applicant's trial and conviction *in absentia* had stemmed from his own conduct, which indicated that he had evaded justice and had thus waived his right to appear in court and defend himself in person.

**2. The Court's assessment**

**(a) General principles**

30. The general principles with regard to the compatibility with Article 6 of the Convention of proceedings held in the absence of the accused may be found in *Sejdovic v. Italy* ([GC], no. 56581/00, §§ 81-88, ECHR 2006-II; see

also *Sanader v. Croatia*, no. 66408/12, §§ 50-53 and 67-74, 12 February 2015, and *M.T.B. v. Turkey*, no. 47081/06, §§ 48-64, 12 June 2018, for the application of those principles in the context of criminal proceedings in Turkey).

**(b) Application of the above principles to the present case**

31. The applicant was tried and convicted *in absentia* in the criminal proceedings before the Istanbul Criminal Court of First Instance resulting in the imposition of a judicial fine on him, which was eventually converted into a term of imprisonment following his failure to pay it. Accordingly, the applicant served just over ten months in prison prior to his release, which was brought about by the legislative amendments abolishing the penalty of imprisonment in respect of the offence of which he had been convicted.

32. It is common ground that the applicant was not personally served with any documents in the context of the criminal proceedings against him (see *Sejdovic*, cited above, § 96, and *Sanader*, cited above, § 77 *in fine*; compare *Medenica v. Switzerland*, no. 20491/92, § 59, ECHR 2001-VI, with further references). However, the Government argued that the applicant had knowingly and willingly absconded from the proceedings and had thus waived his right to be present, because he had (i) moved out of his residential address on account of his debts (as indicated by the statements of the building manager, N.Ş); (ii) failed to inform the authorities of his address change; and (iii) gone abroad for an extended period of time.

33. The Court cannot find that those grounds corresponded to objective factors which were in and of themselves sufficient to conclude that he could have been deemed to have had effective knowledge of the proceedings against him (see *Sejdovic*, cited above, § 99, and compare *Vyacheslav Korchagin v. Russia*, no. 12307/16, § 76, 28 August 2018) or that he had intended to escape trial or otherwise waived his right to be present in any other way (see *Chong Coronado v. Andorra*, no. 37368/15, §§ 42-43, 23 July 2020).

34. First of all, at no stage of the proceedings did the domestic courts assess those points, on which the Government relied before the Court to support their above-noted assertion. Secondly, while it is true that the building manager stated that the applicant had moved out of his apartment owing to issues related to his debts, it is not clear whether those debts were the same as those that formed the basis of the criminal proceedings against the applicant. Thirdly, even assuming that the applicant could potentially be reproached for failing to inform the authorities of his address (see *Colozza v. Italy*, 12 February 1985, § 32, Series A no. 89), the Court considers that it would be too great a leap to attach to such a failure the rationale that the applicant was either aware of the criminal proceedings or intended to evade justice. Fourthly, the same consideration also holds true in respect of the mere fact of being abroad – a fact that was not contested by the applicant – which

does not in and of itself suffice to provide an unequivocal indication in respect of the Government's argument (see *Stoyanov-Kobuladze v. Bulgaria*, no. 25714/05, § 41, 25 March 2014, and compare *H.N. v. Italy*, no. 18902/91, Commission decision of 27 October 1998, unreported, § 1).

35. Given the absence of any objective factors allowing a conclusion to be drawn as regards the applicant's knowledge of the criminal proceedings (see *Sejdovic*, cited above, § 99), the Court cannot conclude that the applicant unequivocally waived his right to appear and defend himself or evaded justice. It remains to be determined whether the applicant was able to obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact (see *Stoichkov v. Bulgaria*, no. 9808/02, § 55, 24 March 2005).

36. In that connection, the Court notes that the applicant applied to the trial court, by means of his letter dated 25 April 2011, for the reopening of the proceedings against him, arguing that he had not been able to make any defence submissions on account of not having been served with any document relating to those proceedings. The trial court rejected that request on 3 May 2011, finding that the service of the writ of summons and conviction dated 17 November 2009 had been effected pursuant to the provisions of the Notification Act. The Court observes that neither the trial court nor the Istanbul Assize Court, the latter dismissing the applicant's objection, verified whether the applicant had indeed been informed of the criminal proceedings in person or had otherwise had effective knowledge thereof (see paragraph 12 above). In view of the above, the Court concludes that the applicant, who was not shown to have had any knowledge of the criminal proceedings against him, was deprived of the possibility of obtaining a fresh determination of the merits of his case, a situation which is contrary to the elementary principles of the right to a fair trial under Article 6 of the Convention.

37. The Government have not argued that this remedy was not an effective one. When an applicant pursues a remedy in the course of which his complaint has been assessed, such as the one used by the applicant (see paragraph 36), use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, 15 October 2009). Having regard to the foregoing considerations, the applicant was not required to use any other remedy. Therefore, the Court dismisses the Government's plea of non-exhaustion based on the applicant's failure to lodge an appeal against the Istanbul Criminal Court's decision of 6 October 2011 (see paragraph 14 above).

38. In any event, as far as the latter remedy is concerned, it transpires from the two judgments cited by the Government that the Court of Cassation's review of the merits of the charge (in respect of both fact and law) was contingent upon the service of the conviction being contrary to the provisions of the Notification Act. The applicant did not advance such an argument before the domestic courts (see, *mutatis mutandis*, *Campbell and Fell*

*v. the United Kingdom*, 28 June 1984, § 127, Series A no. 80), but he simply submitted that he had not been served with any document relating to the criminal proceedings against him. That being the case, the Court cannot conclude that the Government discharged their burden to demonstrate that this specific remedy was an effective one available in theory and in practice in respect of a person, such as the applicant, who has been tried and convicted *in absentia* and who did not have effective knowledge of the proceedings despite the legally valid service of a judgment given in his or her absence (see paragraphs 32 and 33 below).

39. Finally, since the Istanbul Assize Court's decision dated 6 June 2011 dismissing the applicant's objection against the trial court's refusal to reopen the proceedings was served on the applicant's lawyer on 2 August 2011 and the application was lodged with the Court on 8 December 2011, the Court also rejects the Government's preliminary objection based on the applicant's failure to comply with the six-month time-limit laid down in Article 35 of the Convention.

40. There has accordingly been a violation of Article 6 § 1 of the Convention.

41. In view of the above findings, the Court does not find it necessary to examine whether the refusal of the applicant's late appeal gave rise to a further breach of his right of access to a court as protected under Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (a) OF THE CONVENTION

42. The applicant complained that he had served "eight months and three days" in prison owing to proceedings that had been conducted in an unlawful manner, in breach of Article 5 of the Convention, the relevant part of which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; ..."

43. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

44. The applicant reiterated his complaint.

45. Referring to their observations relating to the complaint under Article 6 of the Convention, the Government submitted that the applicant's conviction and his ensuing imprisonment had not been the result of criminal proceedings which could be described as a "flagrant denial of justice", given (i) the requisite diligence exercised by the domestic courts in their attempts

to serve the applicant with documents relating to his trial and (ii) the applicant's absconding from the proceedings.

46. The Court notes that the requirement of Article 5 § 1 (a) that a person be lawfully detained after "conviction by a competent court" does not imply that the Court has to subject the proceedings leading to that conviction to a comprehensive scrutiny and verify whether they have fully complied with all the requirements of Article 6 of the Convention. However, although not every Article 6 violation results in a violation of Article 5 § 1 (a), the Court has also held that if a "conviction" is the result of proceedings which were "manifestly contrary to the provisions of Article 6 or the principles embodied therein", the resulting deprivation of liberty would not be justified under Article 5 § 1 (a) (see *Stoichkov*, cited above, § 51, with further references; see also *Kereselidze v. Georgia*, no. 39718/09, § 48, 28 March 2019). What is required is a breach of the principles of a fair trial that is so fundamental as to amount to nullification, or destruction of the very essence, of the right guaranteed by Article 6 (*ibid.*, § 53).

47. The Court has found (see paragraph 40 above) that the applicant's conviction *in absentia* with no subsequent possibility of obtaining a fresh determination of the merits of the charge was indeed contrary to the elementary principles of the right to a fair trial under Article 6 of the Convention (see *Stoichkov*, cited above, §§ 56-59, and *Gumeniuc v. the Republic of Moldova*, no. 48829/06, §§ 25-26, 16 May 2017). In this specific situation, the applicant's deprivation of liberty to serve the sentence stemming from a conviction resulting from proceedings as described above cannot be considered "lawful" within the meaning of Article 5 § 1 (a) of the Convention.

48. It follows that there has been a violation of Article 5 § 1 of the Convention.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Lastly, the applicant complained under Article 1 of Protocol No. 4 to the Convention that he had been imprisoned owing to his debts. However, as Turkey has not ratified the above-mentioned Protocol, this complaint must be declared incompatible *ratione personae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 (see *T. and A. v. Turkey*, no. 47146/11, § 102, 21 October 2014).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

51. The applicant claimed 1,430 euros (EUR) in respect of pecuniary damage, arguing that he had served his sentence in prison owing to his conviction *in absentia*, resulting in serious financial losses which had brought about the end of his business activities. Furthermore, the applicant had suffered congestive cardiac failure in 2013, that is, after his release from prison, and despite his best efforts, he could not manage to resume his business activities, resulting in his inability to pay the expenses relating to his dependent child. In support of his claims in respect of pecuniary damage, the applicant submitted (i) a letter he had sent to the Silivri public prosecutor’s office – to which he had not received a reply – wherein he had asked to be given a document detailing the amount of money sent to him during his time in prison, which he purported amounted to EUR 1,330; (ii) the payment order issued by the Ümraniye Tax Office on 10 April 2017 in the amount of 735 Turkish liras, corresponding to the amount of food he had consumed while he had been in prison; and (iii) certain medical reports. The applicant further claimed EUR 50,000 in respect of non-pecuniary damage.

52. The Government submitted that there had been no causal link between the violations found and the pecuniary damage reportedly incurred by the applicant and that the claims were excessive. In any event, the applicant’s claims under this head remained unsubstantiated owing to his failure to provide any proof of payment. As for non-pecuniary damage, the Government argued that the applicant’s claim was excessive, unsubstantiated and did not correspond to the amounts awarded in the Court’s case-law.

53. The Court dismisses the applicant’s pecuniary damage claim under item (i) above, as it is not convinced that applying to the Silivri public prosecutor was the only possible avenue to obtain documentary proof in respect of the expenses he had allegedly incurred while serving his prison sentence. In any event, the applicant’s failure to explain the particulars of his expenditure in prison prevents the Court from assessing whether they would have been incurred only as a result of his being in prison or not. The Court also dismisses the applicant’s claims in respect of pecuniary damage in so far as they concern item (ii) owing to his failure to submit any document showing that he had paid the payment order and item, (iii) as no causal link could be established between the health problems the applicant had encountered long after his release and the violations found in the present case (see *Marinova and Others v. Bulgaria*, nos. 33502/07 and 3 others, § 119, 12 July 2016, and compare *Bragi Guðmundur Kristjánsson v. Iceland*, no. 12951/18, § 81, 31 August 2021). The Court is also unable to assess the expenses concerning the applicant’s dependent child owing to his failure to quantify the amount

thereof and submit any document in respect of them. It therefore dismisses that claim.

54. As for non-pecuniary damage, the Court notes that Article 311 of the Code of Criminal Procedure allows for the reopening of domestic proceedings in the event that the Court finds a violation of the Convention. Nevertheless, the applicant must have suffered distress and anxiety due to the violations of Articles 5 and 6 of the Convention as a result of which he served a little more than ten months in prison, which justifies awarding him compensation in respect of non-pecuniary damage. Deciding on an equitable basis, the Court awards the applicant EUR 12,000, plus any tax that may be chargeable.

### **B. Costs and expenses**

55. The applicant also claimed EUR 1,020 for the costs and expenses incurred before the Court, corresponding to (i) legal fees (EUR 600), (ii) the work undertaken by his lawyer and his assistants and stationery expenses (EUR 350), and (iii) translation costs (EUR 90). In support of those claims, the applicant submitted an invoice, a breakdown of costs issued by his lawyer, and an invoice for the translation services.

56. The Government contested that claim, arguing that the applicant had neither submitted sufficient documents showing that he had incurred the costs and expenses nor sufficiently itemised the legal fees, for example by showing how many hours had been spent and on which days.

57. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the amount claimed in full.

### **C. Default interest**

58. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the complaints under Articles 5 and 6 of the Convention admissible;
2. *Declares* the complaint under Article 1 of Protocol No. 4 to the Convention inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's trial and conviction *in absentia* and his inability to obtain a fresh determination of the case in respect of both law and fact;
4. *Holds* that there is no need to examine the remaining complaint under Article 6 § 1 of the Convention concerning the applicant's right of access to a court;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
6. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 1,020 (one thousand and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Registrar

Jon Fridrik Kjølbro  
President